

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)

v.)

ALFRED W. TRENKLER,)

Defendant.)
_____)

CRIMINAL NO. 92-10369-Z

AFFIDAVIT OF TERRY PHILIP SEGAL, ESQUIRE

I, Terry Philip Segal, Esquire, hereby depose and say the following:

1. I am an attorney duly licensed to practice law in the Commonwealth of Massachusetts. I represented the Defendant Alfred W. Trenkler in his criminal trial before this Court in October and November, 1993.

2. Mr. Trenkler was charged with conspiracy under 18 U.S.C. §371, receipt of explosive materials under 18 U.S.C. §844(d), and attempted malicious destruction of property by means of explosion under 18 U.S.C. §844(i).

3. A central contested issue in the Government's case against Trenkler was whether he entered into a conspiracy with Thomas Shay Jr. ["Shay Jr."]. At the trial, the Government introduced Shay Jr.'s statements to prove Trenkler entered into a two-person conspiracy.

4. Over the course of three days of the trial, a colloquy ensued between this Court, the Government and the defense Counsel as to the reliability of Shay Jr.'s out-of-court statements which the Government wanted to admit, as exceptions to the hearsay rule, through three separate witnesses to establish the existence of a conspiracy between Trenkler and Shay Jr. See **Exhibit A**, Trial Transcript, pp. 748-93, 795-828, 871-75.

5. The Government contended that Shay Jr.'s statements were the key to showing that a conspiracy between Trenkler and Shay Jr. existed. Exhibit A, Trial Transcript, at pp. 758-759, 761.

6. This Court acknowledged the reliability problems associated with the testimony of Shay Jr. and even referred to evidence from Shay Jr.'s trial some months earlier.

A hearsay exception is an indication of the reliability of the statement, a statement against penal interests. Obviously, the idea is that a person wouldn't say I did something wrong if in fact I didn't do something wrong. The fact of the matter is that we have evidence in the Shay case from the Government that Mr. Shay precisely and repeatedly did just that. He brags about things. He called attention to himself. He does it time and time and time again, and that is what Dr. Kelly [the Government's expert] told us. He's a chronic liar. That's what he said. And under those circumstances, whatever may be the general rule about the liability of a statement against penal interests, sort of

loses all reliability, the case is (sic) interpreting also say that the more crucial the evidence is that the Government wants to put into evidence against, by a declarant, an unavailable declarant, the more vigilant the Court has to be and the more difficult it becomes for the Government. If it were just something that corroborated something else, it would be one thing by your own statement it is highly crucial evidence. It is the evidence on the issue of conspiracy. Exhibit A, Trial Transcript pp. 762-763 (emphasis added).

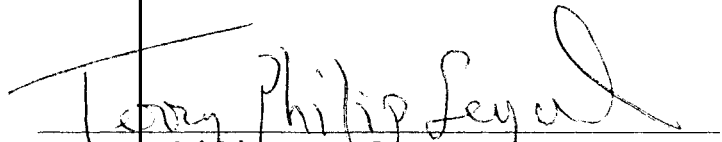
7. Despite its own concerns about Shay Jr.'s reliability, this Court admitted, through three witnesses, nine (9) out-of-court statements by Shay Jr., as well as portions of a videotaped interview given to Channel 56 Reporter Karen Marinella, against Trenkler. Exhibit A, Trial Transcript, pp. 748-93, 795-828, 845-849, 855-858, 866-868, 871-875, 879-880, 883-887, 1540.

8. Before Trenkler's trial began, I considered calling Dr. Robert Phillips as an expert psychiatric witness to testify that Shay Jr.'s statements were the unreliable product of a recognized mental disorder known as "pseudologia fantastica." Because of this Court's prior exclusion of Dr. Phillips' testimony at Shay Jr.'s trial, I decided not to seek the introduction of Dr. Phillips' testimony.

9. Had this Court permitted Shay Jr. to introduce Dr. Phillips' testimony at his trial, I would have sought to introduce Dr. Phillips' testimony at Trenkler's trial as it

related to Shay Jr.'s out-of-court statements. However, in light of this Court's prior ruling at the Shay Jr. trial, I concluded it would be futile to do so.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 21st DAY OF DECEMBER, 1995.


Terry Philip Segal, Esquire

T:585

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by hand/mail on 12/20/95